

INTERNET
FORM NLRB-501
(2.08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

21-CA-166531

Date Filed

12-21-15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

Hoag Memorial Hospital Presbyterian

b. Tel. No. 949-764-4624

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed
1600

d. Address (Street, city, state, and ZIP code)

One Hoag Drive, POB 6100

Newport Beach, CA 92663

e. Employer Representative

Robert Braithwaite, CEO

i. Type of Establishment (factory, mine, wholesaler, etc.)

Acute Care Hospital

j. Identify principal product or service

Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

See Attachment A

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
California Nurses Association/National Nurse United (CNA/NNU)

4a. Address (Street and number, city, state, and ZIP code)

2000 Franklin Street

Oakland, CA 94612

4b. Tel. No. 510-273-2200

4c. Cell No.

4d. Fax No. 510-663-4822

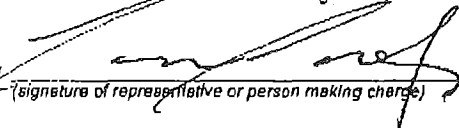
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



Carmen Comsti, Legal Counsel

(Print/Type name and title or office, if any)

Tel. No. 510-443-2743

Office, if any, Cell No.
510-206-6083

Fax No. 510-663-4822

e-Mail
ccomsti@calnurses.org

Address 2000 Franklin Street, Oakland, CA 94612

12/21/2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment A

**Charge Against Employer
Hoag Memorial Hospital Presbyterian**

By California Nurses Association/National Nurses United (CNA/NNU)

2. Basis of the Charge:

Within the past six months, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by, inter alia, (1) maintaining a solicitation and distribution policy with an unlawfully overbroad definition of immediate patient care areas, (2) maintaining a solicitation and distribution policy with an unlawfully overbroad definition of working areas, and (3) maintaining a facially unlawful email and electronic communications policy.

By these and other acts, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5200
Fax: (213)894-2778



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December 22, 2015

CARMEN COMSTI, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES UNITED (CNA/NNU)
2000 FRANKLIN STREET
OAKLAND, CA 94612

Re: HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

Dear Ms. Comsti:

The charge that you filed in this case on December 21, 2015, has been docketed as case number 21-CA-166531. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney MARGARET SERRANO whose telephone number is (213)894-7016. If this Board agent is not available, you may contact Supervisory Attorney STEPHANIE CAHN whose telephone number is (213)894-5228.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Nathan M. Seidman

/s/NATHAN M. SEIDMAN
Acting Regional Director

Enclosures

cc: JENNIFER LEMMON, UNION REPRESENTATIVE
CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSE UNITED (CNA/NU)
225 WEST BROADWAY, SUITE 500
GLENDALE, CA 91204

NMS/hta



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5200
Fax: (213)894-2778



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December 22, 2015

HOAG MEMORIAL HOSPITAL PRESBYTERIAN
ONE HOAG DRIVE, POB 6100
NEWPORT BEACH, CA 92663

Re: HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Nathan M. Seidman

/s/NATHAN M. SEIDMAN
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

NMS/hta

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME **HOAG MEMORIAL HOSPITAL PRESBYTERIAN**CASE NUMBER **21-CA-166531****1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$**YES NO**B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$**H. Gross Revenues from all sales or performance of services (Check the largest amount)**☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**HOAG MEMORIAL HOSPITAL
PRESBYTERIAN**

Charged Party

and

**CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES UNITED
(CNA/NNU)**

Charging Party

Case 21-CA-166531

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on December 22, 2015, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
ONE HOAG DRIVE, POB 6100
NEWPORT BEACH, CA 92663

December 22, 2015

Date

Helen T. Alo, Designated Agent of NLRB


Name

/s/Helen T. Alo

Signature

INTERNET
FORM NLRB-501
(2-09)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
21-CA-166531Date Filed
05-19-2016**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Hoag Memorial Hospital Presbyterian		b. Tel. No. 949-764-4624	
		c. Cell No.	
		f. Fax No.	
d. Address (Street, city, state, and ZIP code) One Hoag Drive, POB 6100 Newport Beach, CA 92663		e. Employer Representative Robert Braithwaite, CEO	
		g. e-Mail	
		h. Number of workers employed 1600	
i. Type of Establishment (factory, mine, wholesaler, etc.) Acute Care Hospital		j. Identify principal product or service Healthcare	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the six months preceding the initial filing of this charge, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by, inter alia, (1) maintaining a solicitation and distribution policy with an unlawfully overbroad definition of immediate patient care areas, and (2) maintaining a solicitation and distribution policy with an unlawfully overbroad definition of working areas. By these and other acts, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) California Nurses Association/National Nurse United (CNA/NNU)			
4a. Address (Street and number, city, state, and ZIP code) 2000 Franklin Street Oakland, CA 94612		4b. Tel. No. 510-273-2200	
		4c. Cell No.	
		4d. Fax No. 510-663-4822	
		4e. e-Mail	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) AFL-CIO			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  (signature of representative or person making charge)		Tel. No. 510-443-2743 Office, if any, Cell No. 510-206-6083 Fax No. 510-663-4822 e-Mail ccomsti@calnurses.org	
Carmen Comsti, Legal Counsel (Print/type name and title or office, if any)		05/19/2016 (date)	
Address 2000 Franklin Street, Oakland, CA 94612			

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5200
Fax: (213)894-2778



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May 23, 2016

CARMEN COMSTI, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES UNITED (CNA/NNU), AFL-CIO
2000 FRANKLIN STREET
OAKLAND, CA 94612

Re: HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

Dear Ms. Comsti:

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Attorney MARGARET SERRANO whose telephone number is (213)894-7016. If the agent is not available, you may contact Supervisory Attorney STEPHANIE CAHN whose telephone number is (213)894-5228.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

/s/OLIVIA GARCIA
Regional Director

Enclosure: Copy of first amended charge

cc: JENNIFER LEMMON, UNION REPRESENTATIVE
CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSE UNITED (CNA/NNU)
225 WEST BROADWAY, SUITE 500
GLENDALE, CA 91204

OG/hta



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

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May 23, 2016

HOAG MEMORIAL HOSPITAL PRESBYTERIAN
ONE HOAG DRIVE, POB 6100
NEWPORT BEACH, CA 92663

Re: HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

Dear Sir or Madam:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney MARGARET SERRANO whose telephone number is (213)894-7016. If the agent is not available, you may contact Supervisory Attorney STEPHANIE CAHN whose telephone number is (213)894-5228.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

/s/OLIVIA GARCIA
Regional Director

Enclosure: Copy of first amended charge

cc: RICHARD M ALBERT, ATTORNEY AT LAW
FOLEY & LARDNER LLP
555 S. FLOWER ST., STE. 3500
LOS ANGELES, CA 90071-2411

OG/hta

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**HOAG MEMORIAL HOSPITAL
PRESBYTERIAN**

Charged Party

and

**CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES
UNITED (CNA/NNU)**

Charging Party

Case 21-CA-166531

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 23, 2016, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

HOAG MEMORIAL HOSPITAL PRESBYTERIAN
ONE HOAG DRIVE, POB 6100
NEWPORT BEACH, CA 92663

RICHARD M ALBERT, ATTORNEY AT LAW
FOLEY & LARDNER LLP
555 S. FLOWER ST., STE. 3500
LOS ANGELES, CA 90071-2411

May 23, 2016

Date

Helen T. Alo, Designated Agent of NLRB

Name

/s/Helen T. Alo

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5200
Fax: (213)894-2778

June 8, 2016

CARMEN COMSTI, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES UNITED (CNA/NNU), AFL-CIO
2000 FRANKLIN STREET
OAKLAND, CA 94612

Re: HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

Dear Ms. Comsti:

We have carefully investigated and considered your charge that HOAG MEMORIAL HOSPITAL PRESBYTERIAN has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that the Employer maintained a solicitation and distribution policy with an unlawfully overbroad definition of immediate patient care areas and maintained a solicitation and distribution policy with an unlawfully overbroad definition of working areas. Regarding solicitation rule 1.1.2, the investigation revealed that the 2015 rule as written is lawful inasmuch as it prohibits solicitation in immediate patient care areas that are presumptively valid, and the Employer has demonstrated that the other areas listed as being prohibitive for soliciting are necessary to avoid a disruption of patient care. Regarding 2015 distribution rule 1.2.2, the investigation disclosed that the rule is not overbroad in its definition of working areas. Rather, the evidence disclosed that the areas prohibited for distribution noted in the rule exclude areas where healthcare work is not performed.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half**

Street SE, Washington, DC 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **June 22, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than June 21, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before June 22, 2016**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after June 22, 2016, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/OLIVIA GARCIA
Regional Director

Enclosure

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN
Case 21-CA-166531

- 3 -

June 8, 2016

cc: JENNIFER LEMMON, UNION REPRESENTATIVE
CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSE UNITED (CNA/NNU)
225 WEST BROADWAY, SUITE 500
GLENDALE, CA 91204

RICHARD M ALBERT, ATTORNEY AT LAW.
FOLEY & LARDNER LLP
555 S FLOWER ST STE 3500
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HOAG MEMORIAL HOSPITAL PRESBYTERIAN
ONE HOAG DRIVE, POB 6100
NEWPORT BEACH, CA 92663

OG/fb

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

June 23, 2016

CARMEN COMSTI, ESQ.
CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES
UNITED (CNA/NNU), AFL-CIO
2000 FRANKLIN ST
OAKLAND, CA 94612

Re: Hoag Memorial Hospital Presbyterian
Case 21-CA-166531

Dear Ms. Comsti:

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:

Deborah M.P. Yaffe, Director
Office of Appeals

cc: OLIVIA GARCIA
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
888 S FIGUEROA ST FL 9
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 28, 2016

CARMEN COMSTI, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION
NATIONAL NURSES UNITED
(CNA/NU), AFL-CIO
2000 FRANKLIN ST
OAKLAND, CA 94612

Re: Hoag Memorial Hospital Presbyterian
Case 21-CA-166531

Dear Ms. Comsti:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in her letter of June 8, 2016.

Contrary to your position on appeal, the evidence presented during the Regional investigation established that the Employer's Solicitation, Distribution Policy and Bulletin Board Policy, specifically, Sections 1.1.2 and 1.2.2, do not unlawfully restrict employees from engaging in protected concerted activity. It is well-established that in the health care setting, a prohibition on solicitation in patient-care areas is presumptively valid. *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 494-500 (1978); *Intercommunity Hospital*, 255 NLRB 468, 471 (1981); *St. John's Hospital*, 222 NLRB 1150, 1150 (1976), *enforcement denied in part*, 557 F.2d 1368 (10th Cir. 1977). Likewise, an employer may lawfully ban distribution in patient-care areas as well as in working areas. An employer may extend its proscriptions even beyond such areas if it demonstrates "special circumstances" showing that the restrictions are necessary to promote patient care. *Intercommunity Hospital*, 255 NLRB at 471. *Cf. Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, 621-22 (1962). In defining patient care areas for purposes of solicitation and/or distribution, the standard is whether an area "serve[s] important and direct functions in the care of patients," in other words, whether protected activities would "tend to directly affect patient care by disturbing patients or disrupting health services." *Intercommunity Hospital*, 255 NLRB at 471-72.

In the instant case, the phrasing in Section 1.1.2 it is not overbroad, as the rule provides examples of areas where solicitation would cause a disruption or disturbance to patient care. These examples give employees guidelines as to where they can and cannot solicit/distribute. Absent evidence that the rule causes confusion or that this rule has been enforced against employees in areas that are clearly not patient care areas, the rule is lawful. With regard to Section 1.2.2, we note that the language of the rule specifically notes lobbies are excluded from

the ban on distribution as well as areas where work is not performed. As to your concerns regarding outside gardens and sidewalks, we note the language also excludes from the ban external areas. As such, the rule itself is not restrictive and therefore not unlawful. Regarding the chapel, the Employer provided sufficient evidence that this is a working area and without evidence to the contrary, the Employer has met its burden or showing its ban on distribution in that area is lawful.

Accordingly, the circumstances do not present sufficient basis to warrant the issuance of a complaint against the Employer in this case.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By:

Mark E. Arbesfeld, Acting Director
Office of Appeals

cc: WILLIAM PATE
ACTING REGIONAL DIRECTOR
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